DATO AW KOW v. HAW PAR BROS. (PTE) LTD. & ANOR.

[O.C.J. (Choor Singh J.) October 14, 1972]

[Singapore — Motion in Suit No. 1815 of 1972]

Companies — Director — Right of inspection of accounts and other records — Inspection by auditor acting for director — Order under section 167(5) of Companies Act (Cap. 187, 1970 Ed.) — Whether order lapses ipso facto upon director ceasing to hold office — Interim injunctions — Whether contents of affidavits scandalous.

The plaintiff was until August 2, 1972 a director of the defendant company. In that capacity he had obtained an order on December 22, 1971 for the accounting and other records of the defendant company to be inspected by an auditor acting for him.

Upon the plaintiff's removal as a director on August 2, 1972 it was contended on behalf of the defendant company that the order pursuant to which the auditor was entitled to inspect the accounting and other records of the company lapsed *ipso facto* and that the auditor was no longer entitled to access to these records. The plaintiff obtained an interim injunction on August 18, 1972 restraining the defendant company and the second defendant, its secretary, from preventing or obstructing the auditor from inspecting the accounting and other records of the defendant company pursuant to the order made on December 22, 1971. On the plaintiff's motion for the extension of the interim injunction until the trial of the action,

Held: the right of a director who has obtained an order for inspection under section 167(5) of the Companies Act to continue to inspect after he ceases to be a director cannot be denied without examining what his interest was in such an inspection and whether further inspection is reasonably necessary for the protection of that interest. Accordingly an order made under section 167(5) does not lapse *ipso facto* upon the director for whose benefit it was made ceasing to hold office. Such order remains in full force until it is discharged, rescinded or varied by the court upon the application of a party affected.

Cases referred to:-

(1) *Millinton* v. *Loring*, 6 Q.B.D. 190.

(2) *Edman* v. *Ross* [1922] N.W.W. Rep. 354.

(3) *Funerals of Distinction Pty. Ltd. and the Companies Act*, [1963] N.S.W.R. 614.

(4) *Foss* v. *Harbottle*, (1843) 2 Hare. 461.

MOTION.

J. Grimberg for the plaintiff.

Peter Mooney and *P. T. Wong* for the first defendant.

A. P. Godwin for the second defendant.

Cur. Adv. Vult.

Choor Singh J.: The question to be answered on this motion is whether or not a company director who has obtained an order under section 167(5) of the Companies Act for the accounting and other records of his company to be inspected by an auditor acting for him is entitled to continue inspecting the books of the company after he ceases to be a director.

The facts which have given rise to this question in these proceedings are as follows. The plaintiff was, until the 2nd day of August 1972, a director of the defendant company which is a private limited company. The late Dato Aw Cheng Chye, who was until his death on the 22nd August 1971 the governing director of the defendant company was also the majority shareholder and the other shareholders are all members of the families of the late Aw Boon Haw and the late Aw Boon Par, at whose instance the company was incorporated in 1932 as a holding company for the Aw family interests which were, initially, in Chinese medicinal products but subsequently included property, newspapers and banking.

In November 1971 the plaintiff requested the defendant company to afford him an opportunity to inspect all the accounting and other records of the company which are required to be kept pursuant to section 167 of the Companies Act. He informed the defendant company that he would be accompanied by an approved company auditor who will, if required, give his undertaking that the information acquired during the inspection would not be disclosed by him to anyone except the plaintiff. The defendant company refused his request and informed him that although as director of the company he had the right to inspect the books of the company and could do so at any convenient time during business hours, such inspection was open only to him and therefore he could not bring an auditor along with him to inspect the company's accounts.

The plaintiff then commenced Originating Summons No. 353 of 1971 in which he asked for an order that the accounting and other records of the company be open to inspection by John Bertram Curran, an approved auditor, acting for the plaintiff upon the usual undertaking by the said John Bertram Curran. In his affidavit filed in support of the application, the plaintiff stated that the annual general meeting of the company was fixed for the 23rd December 1971; that as appeared from the balance sheet of the company as at 31st December 1970 almost the entirety of the assets of the company consisted of shares in Haw Par Brothers (International) Ltd.; that he was advised by his accountant that information relating to the company's holding of the said shares in Haw Par Brothers (International) Ltd. and relating to other items appearing in the balance sheet was necessary to understand the position of the company; that the company would only allow inspection to him but not to an approved company auditor acting for him; and that as he was not an accountant he would not be able to obtain such information as was necessary to understand the position of the company. The plaintiff stated that he required the said information before the annual general meeting to be held on the 23rd December 1971 at which the accounts and reports of the company would be adopted. This application was resisted by the defendant company. After hearing both parties, the court made an order in terms of the application. The order provided that the accounting and other records of the defendant company be open to inspection by Curran, an approved company auditor acting for the plaintiff, a director of the defendant company.

Curran began inspection of the accounts and other records of the defendant company shortly after the order was made on the 22nd December 1971. He continued his inspection off and on over a period of six months until he proceeded on leave to the United Kingdom on the 22nd June 1972. The next thing that

happened was that the second defendant, who is the secretary of the defendant company, notified the plaintiff by letter dated 2nd August 1972, that he was no longer a director of the defendant company. And on the 17th August 1972 the solicitors for the defendant company wrote to the plaintiff's solicitors informing them that as the plaintiff was no longer a director of the defendant company, the order made on the 22nd December 1971 had lapsed and that Curran was no longer free to pursue the investigations pursuant to that order.

The plaintiff then commenced these proceedings in which he claimed certain declaratory orders and made an *ex parte* application for an order that the defendants be restrained until after the hearing of this motion from preventing or obstructing Curran from inspecting the accounts of the defendant company. This application was granted and the motion now before the court is for an order that the injunction granted to the plaintiff on the 18th August 1972 restraining the defendants from preventing or obstructing Curran from inspecting the accounting and other records of the first defendant pursuant to order of court made on the 22nd December 1971 be continued until the trial of this action or until further order.

In support of the motion, four affidavits have been filed on behalf of the plaintiff. Two of these are by Mr. Grimberg, solicitor for the plaintiff and two by Mr. Peter Tham Wing Fai the duly constituted attorney of the plaintiff. To oppose the motion two affidavits have been filed on behalf of the defendant company. One is by Foo Leong Kiat, the chief cashier of Sin Poh (Star News) Amalgamated (Pte.) Ltd. and the other by Aw It Haw, the present chairman of the board of directors of the defendant company. The second defendant Chong Cheng Chye has filed two affidavits.

I shall now endeavour to summarise, as briefly as I can, the evidence put before this court in the aforesaid addidavits. In the first affidavit filed on the 21st August 1972, Mr. Grimberg complained that by a letter dated 2nd August 1972, the second defendant, as secretary of the defendant company, had notified the plaintiff that the shareholders had removed him as a director of the company and that by a letter dated 17th August 1972 the solicitors of the defendant company had notified the plaintiff that as he was no longer a director of the defendant company, the order made on the 22nd December 1971 had lapsed and that Curran was no longer free to pursue his investigations pursuant to that order. In his second affidavit filed on the 31st August 1972, Mr. Grimberg gives the reason for joining the second defendant in these proceedings, the reason being that the second defendant had prevented Curran from continuing his inspection of the records of the defendant company and that he had also informed Curran that he was not prepared to give Curran access to the Company's records in view of the plaintiff's removal from directorship.

Peter Tham Wing Fai, in his first affidavit filed on the 30th August 1972 has put before the court facts upon which it is contended the injunction granted in these proceedings on the 18th August 1972 should be continued until the trial of this action. The facts put forward are that the plaintiff who does not have knowledge of accounts or accounting procedures, began to suspect some time prior to the death of Dato Aw Cheng Chye, that the property and funds of the defendant company were not being applied wholly in the interests of the company and its shareholders; that the plaintiff decided that the time had come to take active steps with a view to protecting his interests; that the plaintiff duly appointed Mr. T. Q. Lim, an advocate and solicitor, his proxy to attend the annual general meeting of Sin Poh (Star News) Amalgamated Ltd., a subsidiary of the defendant company, but the second defendant refused to accept Mr. T. Q. Lim as the plaintiff's proxy on the ground that Mr. Lim was not a member of the Aw family; that on the 12th Novemmer 1971 Foo Kwan Yin, a former employee of the *Sin Chew Jit Poh*, a newspaper in the Sin Poh (Star News) Amalgamated (Pte.) Ltd. group, telephoned the plaintiff and informed him that he was instructed by Aw Swan, the general manager of *Sin Chew Jit Poh* to inform the plaintiff that "it would not be best to send a lawyer to the forthcoming meetings of the defendant company and of Sin Poh (Star News) Amalgamated (Pte.) Ltd., otherwise the salaries of the plaintiff's son Aw Tok Jit and daughter Joyce Aw Bee Gie, both employed by the *Sin Chew Jit Poh*, would be cancelled"; that Mr. T. Q. Lim, duly attended the Sin Poh meeting on the 15th November 1971 when it was adjourned because the accounts did not comply with the Companies Act; that by letter dated the 13th December 1971, the plaintiff's said son Aw Tok Jit and daughter Joyce were notified by the *Sin Chew Jit Poh* that their salaries would be reduced by half and cancelled respectively; that the shareholders of the defendant company were invited on the 5th August 1972 to advance reasons for the plaintiff's removal from directorship and they have failed to do so and that the plaintiff is driven to the conclusion that the removal was made mischievously and in bad faith, in a misconceived effort to prevent the continued inspection of the company's records by Curran. Peter Tham goes on to cite from Curran's interim report some of his findings made upon his examination of the accounts and records of the defendant company. If Curran is to be believed, Dato Aw Cheng Chye appears to have committed misfeasance upon a massive scale. Curran's findings can be summarised and grouped under three heads. First, according to Curran the records of the defendant company show that there is the sum of $5 million odd due by Dato Aw Cheng Chye to the company. Secondly, there is the $25 million which is the value of the Haw Par International shares which according to Curran should be owned by the defendant company but of which no trace could be found by him. Thirdly, according to Curran his investigations so far disclose that a sum to the order of $24 million in terms of money and property belonging to the defendant company was converted, one way or another, by Dato Aw Cheng Chye to his own use.

In his affidavit filed on behalf of the defendant company on the 29th August 1972 Aw It Haw, chairman of the board of directors of the defendant company stated that the plaintiff is by repute the adopted son of the late Aw Boon Haw; that the plaintiff has

been the cause of trouble in the Aw family on a number of occasions; that he had thought for a long time that it was undesirable that the plaintiff should remain as director of the defendant company but in view of the charitable attitude taken towards the plaintiff by the late Dato Aw Cheng Chye, he had always been reluctant to initiate the plaintiff's removal from directorship and that now as the widow and son of Dato Aw Cheng Chye had agreed that the plaintiff should be removed, the other members of his family who would have removed him long ago, have all joined forces and removed the plaintiff from the directorship of the defendant company. Aw It Haw then goes on to give three examples of "trouble and distress" caused by the plaintiff in the Aw family. The first example given is that in 1953 the late Aw Boon Haw removed the plaintiff summarily from his office as managing director of the *Sin Chew Jit Poh* newspaper and thereafter refused to allow the plaintiff to have anything further to do with the running of that newspaper. The second example is the exposure by the Singapore Government of the so-called "black operations" involving the *Eastern Sun* newspaper which was alleged to have been financed by communist agents in Hong Kong to the tune of four million dollars. The plaintiff was named by the Government as the person who received the money from the communist agents, and as a consequence of this publicity he was compelled to resign from the directorship of Sin Poh (Star News) Amalgamated (Pte.) Ltd. on 18th May 1971. The third example is an allegation that the plaintiff had taken an unfair advantage of his position and had made secret profits in the purchase of newsprint for the *Sin Chew Jit Poh.* This allegation is supported by Foo Leong Kiat in his affidavit.

Peter Tham in his second affidavit filed on the 8th September 1972 states that he is instructed by the plaintiff to state that the examples of the so-called "troubles and distress" caused by the plaintiff are wholly inept; that the plaintiff was forced to resign the directorship of Sin Poh (Star News) Amalgamated (Pte.) Ltd.; that the plaintiff was reinstated as managing director of *Sin Chew Jit Poh;* that there is no truth in the allegation that the plaintiff received secret rebates from various suppliers of newsprint to *Sin Chew Jit Poh;* that the matters referred to in the affidavit of Foo Leong Kiat and Aw It Haw had nothing whatsoever to do with the plaintiff's purported removal from the directorship of the defendant company and that the said removal was effected in an effort to frustrate the continued inspection by Curran of the accounting and other records of the defendant company and/or to punish the plaintiff for applying to court for Curran's appointment.

As for the two affidavits filed by Chong Cheng Chye, the second defendant, all that he says in them is that prior to the removal of the plaintiff from the directorship of the defendant company, Curran was never in any way hindered or interfered with in his inspection of the records of the defendant company; that the records and the information which Curran has asked have always been promptly furnished; that after the plaintiff's removal from directorship, when Curran came to the defendant company's office to continue inspecting the records, he did inform Curran that he could not continue inspecting the company's records because the plaintiff had been removed as a director; that his action in so informing Curran was pursuant to legal advice to that effect given to the defendant company; and that under the circumstances there was no justification for joining him as a defendant in these proceedings.

It is contended on behalf of the defendants that the question with which I am concerned, namely, whether a company director who has obtained an order under section 167(5) of the Companies Act and who thereafter ceases to be a director is entitled to continue inspecting the books of the company is a pure question of law and no evidence is necessary or relevant beyond the factual points contained in the question. I do not agree with this submission. In my opinion the question posed cannot be considered in isolation from the surrounding facts. The question must be considered against the canvas of the whole background but before doing that there are a number of subsidiary submissions which must be dealt with.

First, it is complained that no affidavit at all has been filed on behalf of the plaintiff nor has any explanation been offered as to why it has not been filed. It is contended that it is the standard practice on an application of this sort for the plaintiff personally to file an affidavit and that the plaintiff's failure to file an affidavit has deprived the defendants of their right to cross-examine him. I do not think it is absolutely essential for the plaintiff to personally file an affidavit. In an application for an injunction the party making the application is entitled to place the essential facts before the court through his solicitor and also through his duly constituted attorney and that is exactly what the plaintiff has done. The failure of the plaintiff to file an affidavit in support of his application is not fatal. Most of the relevant evidence is in the affidavit of Peter Tham and no application has been made to cross-examine him.

Next, it is submitted that most of the evidence filed on behalf of the plaintiff is scandalous, irrelevant and hearsay and should be struck out. If the defendants thought that some of the evidence in the affidavits filed on behalf of the plaintiff was scandalous, they should have immediately taken out a summons for an order to have it expunged from the record of this case. This they have not done but nevertheless they are entitled to object to it for scandal. What is scandal? It consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to good manners or which charges some person with a crime not necessary to be shown in the cause. It also includes any unnecessary allegation bearing cruelly upon the moral character of an individual. However, there are sometimes cases, in which words appear in the record of the case, which though apparently scandalous, are yet material to the matter in dispute, and the court therefore always judges whether, though the matter may be *prima facie* scandalous, it is absolutely necessary to state it and if it materially tends to the point in issue, and is material to the cause of either party, it is never looked upon as scandalous. See *Millington* v. *Loring.*[1]

The directors of a company are in one sense trustees of the property of the company and it is not scandalous or impertinent to challenge any act of a trustee as misconduct or to impute to him corrupt or improper motives. I see nothing scandalous in one director of a company accusing another director of misfeasance. Furthermore, these allegations of misfeasance against the late Dato Aw Cheng Chye are highly relevant to the question now before this court. In my view, these allegations of misfeasance go to the root of the whole matter and are relevant on the issue whether the plaintiff should be allowed to continue inspecting the accounts of the company although he is no longer a director of the company.

The next submission is that the injunction granted to the plaintiff on the 18th August 1972 should not be continued because: —

(1) "The plaintiff is seeking a mandatory restorative injunction. It is not restrictive in effect. The effect sought is that of a mandatory injunction ordering the defendants to permit Curran to inspect the books. A mandatory injunction is very rarely granted."

(2) "The *ex parte* injunction ought not to have been granted. The full facts were not put before the court. The law was not fully drawn to the court's attention."

(3) "An *ex parte* injunction will only be granted in the case of emergency. On an *ex parte* application the evidence must show that if the injunction is not granted *ex parte,* irreparable injury will be done. The application should not have been made *ex parte.*"

(4) "If the court's attention had been drawn to the legal requirements and to the proper facts, including the missing facts, the court would have concluded that it had no jurisdiction under the Rules of the Supreme Court to make the order and the injunction would never have been granted on the *ex parte* application."

In my opinion the plaintiff is not seeking a mandatory injunction because there already exists an order entitling Curran to look at the books. That order has not been discharged and what the plaintiff is seeking is a prohibitory order, that is to say an order prohibiting the defendants from interfering with the inspection that Curran is authorized to carry out pursuant to the order made on the 22nd December 1971 in Originating Summons No. 353 of 1971.

The other three reasons advanced amount to this, that there was *mala fides* on the part of the plaintiff in the making of his *ex parte* application for an injunction and that the court was deceived or misled in the granting of the injunction. There is in this case no question of suppression of facts, deception or misleading of the court which led to the making of the *ex parte* order. The sole reason for granting the injunction was that in refusing to allow Curran to look at the books of the defendant company, the defendants were taking the law into their own hands and defying an order of this court which empowered Curran to inspect the accounts and other records of the defendant company. The order made on the 22nd December 1971 in Originating Summons No. 353 of 1971 was a valid order made after hearing both parties. There was no appeal against that order and it is binding between the parties. It remained and will remain in full force until discharged, rescinded or varied by this court. If, after the plaintiff's removal from directorship, the defendants felt that the order should no longer be binding on them they should have applied to this court for the discharge of the order. They had no right to assume that the order had lapsed and act on that assumption and thereby flout the order. By not allowing Curran to look at the books of the defendant company, the defendants were in contempt of the order made on the 22nd December 1971 and the injunction was necessary to enforce compliance with that order. Furthermore, if the defendants felt, for the reasons now advanced by them, that the injunction had been wrongly granted, they should have immediately applied to this court to discharge the injunction. This they never did. The question which the court has now to consider is whether a prohibitive injunction, granted *ex parte* should be continued and the four propositions now advanced by the defendants in support of their submission that the injunction was wrongly granted are wholly irrelevant because the sole reason for granting the injunction was to enforce compliance with an order of this court which the defendants were flouting.

Mr. Godwin, counsel for the second defendant, has advanced an additional reason in support of the submission that the *ex parte* injunction should not have been granted. He says that the only affidavit filed in support of the *ex parte* application is the affidavit of Mr. Grimberg; that the hearsay rule is infringed in that affidavit and that when the inadmissible parts are removed, there is virtually no evidence whatever in support of the application for the *ex parte* order. He submits that the court was misled into acting without jurisdiction in granting the *ex parte* order. I am unable to accept this submission. As already stated, the sole reason for granting the injunction was the fact that the defendants were in contempt of the order of court dated the 22nd December 1971 and even if all the objectionable parts were deleted from the affidavit of Mr. Grimberg, there was sufficient evidence before the court to warrant the granting of the injunction.

I now come to the substantial question in this case, namely, whether the *ex parte* injunction granted to the plaintiff should be continued so that Curran could continue with his inspection of the accounts and other records of the defendant company even though the plaintiff is no longer a director of the company. The question thus raised is one of considerable importance to companies and directors generally and the matter must therefore be examined in some detail. Section 167(3) of the Companies Act (Cap. 185) quite clearly confers the right on a director to inspect the company's records. Section 167(5) extends that right to a suitably qualified expert agent of a director *i.e.* an approved company auditor, acting for such director, on the requisite undertaking by the auditor that he will not disclose any information acquired by him during his inspection except to the director on whose behalf he has been authorised.

It is submitted on behalf of the defendants that the order of court appointing Curran was the machinery provided by the Act to give effect to section 167(5); that it cannot bestow any right on Curran which the Act itself does not bestow on the plaintiff as a director; that the plaintiff's capacity as director is vital for Curran to continue his inspection and that on the plaintiff's ceasing to be a director on the 2nd August 1972, the order of court became incapable of performance by Curran, who could not report his findings to the plaintiff because he was no longer a director. It is contended that the reference in the order of court to the plaintiff being a director is not merely descriptive, but is a reference to his capacity wherefrom his rights under the Companies Act are derived and that Curran's authority as an agent ceases on the incapacity of the plaintiff, his principal, even though Curran's authority is contained in an order of court. It is claimed that section 167(5) of the Act confers a right to see the accounts only on a person who *is* a director and not on a person who *was* a director.

Two reported decisions from Australia are cited in support of this submission. First, the case of *Edman* v. *Ross*,[2] is relied on. That case was decided before the equivalent of section 167(5) of our Companies Act was enacted in Australia. The question before the court in that case was whether a director of a company had the right to inspect and take copies of documents and if so whether he was entitled to appoint an accountant to do so on his behalf. In answering both questions in the affirmative, Street C.J. observed that if a director utilised information so acquired wrongfully, and to the prejudice of the company, he could be removed. The question as to the rights of a director after his removal from directorship was never before the court and the court was not construing the section which this court has now to construe because this section did not then exist. The case shows that our section 167(5) is merely declaratory of the common law. I do not see how this case can possibly be of any assistance to the defendants.

The defendants rely more heavily on the decision in the second case cited by them, which is *Funerals of Distinction Pty. Ltd. and the Companies Act*.[3] This case concerned section 102(5) of the Companies Act, 1963 of Australia which is in *pari materia* with section 167(5) of our Companies Act. The application for inspection of the accounts was opposed by the respondent company largely on the ground that the accountant named by the applicant was also the accountant for a rival business concern. Jacobs J. held that "subsection (5) was in aid of the absolute right under subsection (2)" and that "it would need a very strong case to be made out to refuse an order under subsection (5)". He went on to say that "there is a discretion to a limited extent", and that "it is a narrow discretion". The defendants make much of the following two passages in the judgment, at page 615: —

"....I have to determine whether the discretion within these narrow limits should be exercised in the present case. Firstly, there is the fact that within a short time it would appear that the applicant is likely to cease to be a director. However, I think that situation can be met by allowing some time, and making the order only provided that he shall be a director at the time of that inspection...."

xxx xxx xxx

"....In the particular circumstances, I think the somewhat precarious position of the director ought to be taken into account, because once he ceases to be a director his interest in the inspection, in his capacity as director as distinct from his capacity as shareholder, would cease.

Therefore, the order which I make is that the accounts of the company for the year ending 30 June 1962, on the week days of the week commencing 20 July between the hours of three o'clock and five o'clock, be open to inspection by the accountant, Frank Vincent James, provided that at 20 July the applicant shall still be a director of the company....."

It is argued that the judge was aware that the director concerned was liable to cease to be a director, and therefore he postponed the operation of his order; that there was no need to postpone the operation of his order if the order would have continued notwithstanding that the director concerned ceased to be a director; that it is clear from the case that the judge saw that his order would cease to have effect if the director was removed; that the judge thought it would be pointless to make the order if the director was going to be removed and that he therefore postponed the operation of the order for a sufficient time to see whether the company was going to remove the director or not. In my opinion, this case too, is not of much help to the defendants. The judge in this case was very anxious that the inspection at the instance of the applicant should not be delayed and he says so quite clearly in his judgment. If the law is that an inspection order obtained by a director lapses when he ceases to be a director, then there was no need at all for the judge to suspend the operation of the inspection order. He could have allowed inspection straightaway and if and when the applicant was removed from directorship the order authorising inspection would have lapsed. That would have been the simplest solution to the problem before the judge, had the law been as contended by the defendants. It seems to me that the defendants are reading into the judgment of Jacobs J. something which is not there. In my opinion this case is no authority for the proposition that an order authorising the inspection of accounts lapses when the director at whose instance it is made ceases to be a director.

The suggestion that not only does an order made under subsection (5) lapse *ipso facto* upon a director being removed, but also that after his removal he is not entitled to information obtained as a result of the inspection, notwithstanding the fact that that information was obtained from an inspection made before his removal does not bear examination. The result of that proposition would be that if a director, at whose instance an auditor started an investigation three months ago, is removed today, the auditor would be precluded from reporting tomorrow to his principal the result of his enquiry. In my judgment any interpretation of subsection (5) which leads to that result is unjust and absurd and must be rejected on those grounds.

It is well established that when a right is expressly conferred by statute the limit of the right depends on the true construction of the statute. Bearing in mind this principle it is necessary to turn to the statute on

which the plaintiff relies and see what is the limit of the right conferred on a director. Section 167 of the Act which gives a director the right to inspect is completely silent as to what happens to that right if he ceases to be a director in the middle of his inspection. Must further inspection also cease? The Legislature never envisaged this situation and has not expressly answered this question. However, it does not expressly disallow further inspection. The answer to this crucial question must therefore be found by the application of the general principles of law and equity.

Parliament having conferred on a director the right to inspect, the court ought not so to construe the statute as to make the right conferred illusory, for that would be the result if the court were to hold that the inspection must cease upon removal of the director. On such an interpretation the court would in effect be rendering the statute of no avail in the case of an honest director who obtains an inspection order under section 167(5), if his fellow directors, who are dishonest, can by causing him to be removed the very next day, nullify the said order. In my opinion the right of a director, who has obtained an inspection order under section 167(5), to continue to inspect after he ceases to be a director, cannot be denied without examining what his interest is in such inspection and whether further inspection is reasonably necessary for the protection of that interest. To deny him further inspection without such enquiry would render the right to inspect practically useless. In my opinion, the interpretation which the defendants have put forward, would lead to unreasonableness and injustice, and must therefore be rejected because the court must presume against any intention on the part of the Legislature to cause injustice. For these reasons I hold that an inspection order obtained by a director under section 167(5) of the Act does not, *ipso facto*, lapse upon his ceasing to be director. It remains in full force until it is discharged, rescinded or varied by the court upon the application of either party. On such application, the court has a discretion to allow the inspection to continue, notwithstanding the fact that the director has been removed, if the circumstances of the case so warrant. If further inspection is reasonably necessary for the protection of the applicant's legitimate interest, the court must do justice in the matter and allow further inspection, for a reasonable period, of the accounts and other records of the company for the period during which the applicant was a director.

In this case it is abundantly clear that the plaintiff had his suspicions when he instituted an inspection of the accounts of the defendant company for his own information in order to satisfy himself that things were as they should be. And what does his accountant find? He discovers misfeasance on a massive scale on the part of the governing director of the defendant company. And as soon as this discovery is made and before the investigation can be completed, the plaintiff is removed from his directorship with the obvious intention of frustrating the investigation. There is acute friction between the plaintiff and the other shareholders of the defendant company and the relationship between them continues to grow worse. It is true that the plaintiff is a minority shareholder and owns only five per cent of the paid up capital of the company but that does not mean that his rights can be trampled by the other shareholders by ganging up against him.

It is suggested that even if there are irregularities, the majority shareholders can regularise the position *ex post facto*. No majority can sanction an act which is illegal. The well-known rule in *Foss* v. *Harbottle*,[4] cannot be invoked where the act complained of constitutes a fraud on a minority shareholder, and the company is prevented from taking action against the wrong-doer by the votes controlled by the company.

It is submitted that misfeasance and fraud are not issues in this case and that these points will be answered if it ever becomes necessary to do so. In my opinion the question of misfeasance on the part of the late Dato Aw Cheng Chye, as stated earlier, is not only relevant but goes to the root of the whole matter. If the defendants have been advised not to answer the allegations of misfeasance, then, in my view, they have been wrongly advised. The contents of Peter Tham's affidavit and Curran's report remain unchallenged and it is evident that, *prima facie*, a substantial claim lies against the estate of the late Dato Aw Cheng Chye. Curran is a senior partner in a well-known firm of chartered accountants and is a responsible member of his profession. His report cannot be lightly treated. If the estate of the late Dato Aw Cheng Chye is eventually ordered to refund to the company the sum of $54,000,000, the plaintiff, who holds five per cent of the share of the company, stands to benefit to the extent of $2,700,000. It will be seen, therefore, that the plaintiff had a dual interest in initiating the inspection of the defendant company's books. First, as a director, it was his duty to investigate misfeasance on the part of a co-director. Secondly, he had a substantial financial interest in the matter.

In my view, the plaintiff has clearly established his interest in the continuation of the inspection ordered by this court on the 22nd December 1971 and also that such further inspection is reasonably necessary for the protection of his interest, because until Curran completes his investigations, proceedings cannot be instituted against the estate of the late Dato Aw Cheng Chye. It is on these facts that this court must decide whether or not the *ex parte* injunction granted to the plaintiff on the 18th August 1972 should continue.

In my opinion, the plaintiff has made out a strong *prima facie* case in support of his right to continue inspection of the defendant company's accounts and other records and there can be no objection to it on equitable grounds. It is not a valid objection that the interlocutory injunction is in the same terms as the injunction which may be granted when the action comes to be heard ultimately. And the balance of convenience is clearly in favour of the plaintiff. The defendant company would suffer no injury at all by the granting of the injunction. It has nothing to lose and everything to gain if the injunction is continued and Curran is allowed to complete the investigation. The company undoubtedly stands to gain as a result of the efforts of the plaintiff and it is not understood why it is opposing this motion. By resisting this applica-

tion the company is clearly not acting in the best interests of its shareholders but is, it seems to me, out to shield a former director against whom a *prima facie* case of misfeasance on a very large scale has been made out.

The jurisdiction of the court to grant an interlocutory injunction is governed by equitable principles and the court must have regard to the conduct and dealings of the parties. The defendant company has been resisting inspection of its books by the plaintiff even when he was its director. He was not allowed to inspect with the aid of his accountant although the law gave him a clear right to do so. In consequence the plaintiff was obliged to apply to this court for inspection and again that application was opposed by the company for no valid reason. In my view the conduct of the company has been throughout unreasonable.

For these reasons, both on the law and the facts, the plaintiff is, in my judgment, entitled to have the *ex parte* injunction granted to him on the 18th August 1972 continued until Curran completes his inspection.

The question that next arises is, should there not be a time limit for Curran to complete his investigations. In my opinion, in fairness to the company, there should be such a limit. Counsel for the plaintiff has suggested that Curran should be given time till the end of this year to complete his enquiry. I consider that a reasonable period and accordingly there shall be an order that the injunction dated the 18th day of August 1972 do continue till the 31st December 1972.

I must now deal with the submission that the second defendant has been wrongly joined in these proceedings. The only reason advanced by the plaintiff for joining him is that he stopped Curran from looking at the books of the company after the plaintiff was removed from directorship. The second defendant admits this and says that he did it in his capacity as the secretary of the defendant company and that he acted in pursuance to legal advice given to the defendant company. It is plain therefore that in preventing Curran from looking at the books of the company, the second defendant was acting on the instructions of the defendant company. There is no evidence that the second defendant did anything on his own, independently of the company's instructions. Under the circumstances, it seems to me, that there were no grounds at all for the plaintiff to join the second defendant in these proceedings. He has been wrongly joined and therefore there shall be an order that his name be struck out.

The plaintiff will pay the second defendant's costs of these proceedings as taxed. The first defendant will pay the plaintiff's costs as taxed.

Order accordingly.

Solicitors: *Drew & Napir; P. T. Wong & Co.; Donaldson & Burkinshaw.*

SIVARAJAN v. SIVARAJAN

[D.C.A. (Winslow J.) October 19, 1972]

[Singapore — District Court Appeal No. 5 of 1971]

Conflict of Laws — Divorce — Foreign decree — Jurisdiction — Domicile — Women's Charter (Cap. 47), ss. 3, 60(1)(c) & 80.

Family Law — Maintenance — Divorce obtained from a foreign court — Divorce not recognised — Women's Charter (Cap. 47), s. 60(1)(c).

This was an appeal by the husband against the judgment of the magistrate ordering maintenance to be paid by him to the respondent with effect from June 1, 1970 under section 60(1)(c) of the Women's Charter for neglecting to provide maintenance for her as his wife. The appellant contended that although he married her in Tellicherry India in 1966, he had obtained a divorce from her in the Court of the Munsif at Tellicherry on January 2, 1970. The issue before the magistrate was whether she was still the wife of the appellant and whether he had neglected to maintain her and the magistrate decided that the respondent was still married to the appellant and that the divorce granted by the Court of the Munsif could not be recognised in Singapore. The magistrate found that the appellant was domiciled in Singapore on the relevant date.

Held, dismissing the appeal: (1) the mere fact that a marriage was celebrated in Tellicherry would not be sufficient to create a real and substantial connexion between the appellant and Tellicherry;

(2) by virtue of section 80 of the Women's Charter jurisdiction with regard to the dissolution of such marriage as in this case rested with the High Court of Singapore. The court in Singapore therefore could not recognise the purported Indian divorce;

(3) in the circumstances there was no ground to interfere with the magistrate's order for maintenance.

Indyka v. *Indyka*[1] distinguished.

Case referred to:-

(1) *Indyka* v. *Indyka* [1967] 2 All E.R. 689.

DISTRICT COURT APPEAL.

J. B. Jeyaretnam for the appellant.

Arul Chandran for the respondent.

Winslow J.: In this appeal against the judgment of the 8th Magistrate dated 1st March 1971 ordering maintenance in the sum of $200 per month to be paid by the appellant to the respondent, with effect from 1st June 1970, under section 60(1)(c) of the Women's Charter (Cap. 47) for neglecting to provide maintenance for her as his wife, the appellant contended that although he married the respondent in India in 1966 he obtained a divorce from her in the Court of the Munsif at Tellicherry, Kerala State, on 2nd January 1970.

The sole issue before the magistrate was whether she was still the wife of the appellant and whether he had neglected to maintain her and he decided that the respondent was still married to the appellant and that the divorce granted by the Court of the Munsif on 2nd January 1970 could not be recognised in Singapore.

The magistrate found that the appellant was domiciled in Singapore on that date.

By virtue of the provisions of section 80 of the Women's Charter therefore, jurisdiction with regard to the dissolution of such a marriage as this which was celebrated on 18th April 1966 in Tellicherry, Kerala State rests with the High Court of Singapore.